



U.S. Department of Justice

United States Attorney  
District of New Jersey

Strike Force

CHRISTOPHER J. CHRISTIE  
United States Attorney

970 Broad Street, Suite 700  
Newark, New Jersey 07102

Phone: 973-645-2752  
Fax: 973-645-3497

Anthony Moscato  
Assistant United States Attorney

January 6, 2006

The Honorable Faith S. Hochberg  
United States District Judge  
United States Post Office and Courthouse  
Federal Square  
Newark, New Jersey 07102

Re: United States v. Roy Depack  
Crim. No. 04-599 (FSH)  
Motion for Arrest Warrant

Dear Judge Hochberg:

The United States respectfully moves under 18 U.S.C. § 3148(b) for a warrant for defendant Roy Depack's arrest. After the defendant is taken into federal custody, the United States intends to move for a detention hearing and an order revoking the defendant's bail. Please accept this letter brief in lieu of a more formal submission.

I. Facts

On September 3, 2003, the defendant appeared before the Honorable Magistrate Judge Ronald J. Hedges after the defendant's arrest on a Criminal Complaint, and Judge Hedges imposed the following conditions of bail on the defendant: (1) \$100,000 bond co-signed by the defendant's mother; (2) appointment of a third party custodian (mother); (3) travel restricted to Essex and Union Counties, New Jersey; and (4) that the defendant not commit any local, state, or federal offenses. On February 23, 2004, Judge Hedges modified these conditions to allow the defendant to travel "outside of Essex and Union counties as deemed necessary by Pretrial Services" (hereinafter "PTS").

The defendant is presently incarcerated in Southwood State Prison, New Jersey based on a State conviction for credit card fraud, which offense occurred before September 3, 2003. According to State authorities, the defendant is scheduled to be released on parole in the near future.

On March 2, 2005, the defendant pleaded guilty before Your Honor to four counts of the Indictment, Criminal Number 04-599 (FSH). According to the U.S. Probation Office's Presentence Investigation Report, the defendant's estimated, advisory guideline range is between 70 and 87 months' imprisonment. The defendant now seeks to withdraw his guilty plea. The Court has scheduled a status conference in this matter for January 18, 2006.

On or about May 31, 2005, the defendant violated a bail condition by being in Bergen County, New Jersey without PTS' prior approval. On that date, the Fairview Police Department (hereinafter "FPD"), Bergen County, arrested the defendant for providing false information and hindering apprehension, which charges are classified as petty offenses and not crimes under New Jersey law. PTS Officer Kenneth Rowan has confirmed that the defendant's physical presence in Bergen County on May 31, 2005 was not approved by PTS.

On or about June 6, 2005, the defendant appeared before a State judge for sentencing on the credit card charge referred to above. The defendant made disparaging remarks to the Court, and the judge held him in contempt and jailed him.

## II. Summary of the Law

The United States respectfully moves for a warrant for the defendant's arrest for the purpose of initiating bail revocation proceedings. Under 18 U.S.C. § 3148(b), the United States "may initiate a proceeding for revocation of an order of release by filing a motion with the district court . . . .[and] [a] judicial officer may issue a warrant for the arrest of the person charged with violating a condition of release. . . ."

Title 18, United States Code, Section 3148, provides the standard in the event a defendant violates a condition of bail. Section 3148(b) states the following in pertinent part:

The judicial officer shall enter an order of revocation of the previous release order, and shall order detention, if after a hearing, the judicial officer -

(1) finds that there is -

(A) probable cause to believe that the person has committed a Federal, State, or local crime while on release; or

- (B) clear and convincing evidence that the person has violated any other condition of release; and

(2) finds that -

- (A) based on the factors set forth in section 3142(g) of this title, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any person or the community; or
- (B) the person is unlikely to abide by any condition or combination of conditions of release.

### III. Argument

The defendant violated a bail condition on May 31, 2005. On that date, the defendant was physically present in Bergen County without PTS' knowledge or approval. Therefore, clear and convincing evidence exists to establish that the defendant violated a bail condition.

The evidence further demonstrates that the defendant is a flight risk and unlikely to abide by any condition or combination of conditions of release. First, he has a significant criminal history, and this criminal history now includes a credit card fraud conviction. Second, he is facing substantial penalties for the instant offenses to which he pleaded guilty. Finally, the defendant's past conduct - including his arrest by the FPD and his contempt of court - demonstrates that he is unwilling to conform his conduct to the law, is a flight risk, and is unlikely to abide by any condition or combination of conditions of release.

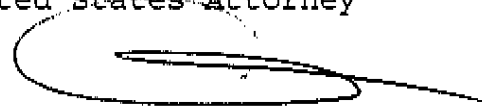
It should be further noted that based on the defendant's plea, the defendant must be detained "unless the [Court] finds by clear and convincing evidence that the [defendant] is not likely to flee." 18 U.S.C. § 3143(a).

IV. Conclusion

For the reasons stated above, the United States respectfully submits that the Court should execute the attached Arrest Warrant. Once the defendant is taken into federal custody, the United States will coordinate with the Judge Hedges' chambers for a detention hearing. Thank you for your attention to this matter.

Very truly yours,

CHRISTOPHER J. CHRISTIE  
United States Attorney



By: Anthony Moscato  
Assistant U.S. Attorney

cc: Henry E. Klingeman, Esq.  
Kenneth Rowan, PTS

**United States District Court**  
**District of New Jersey**

**UNITED STATES OF AMERICA****WARRANT FOR ARREST**

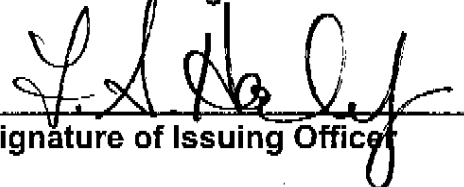
v.

**ROY DEPACK****Case Number: 04-599 (FSH)**

To: The United States Marshal and any Authorized United States Officer

**YOU ARE HEREBY COMMANDED** to arrest Roy Depack**and bring him forthwith to the nearest magistrate to answer an:**☐ Indictment ☐ Information ☐ Complaint ☒ Order of court ☐ Violation Notice ☐ Probation Violation Petition

for violating conditions of pretrial release under 18 U.S.C. 3148(b).

Hon. Faith S. Hochberg  
**Name of Issuing Officer**  
**Signature of Issuing Officer**United States District Judge  
**Title of Issuing Officer**January 6, 2006, Newark, New Jersey  
**Date and Location**

Bail fixed at \$ \_\_\_\_\_ by \_\_\_\_\_

RETURN		
This warrant was received and executed with the arrest of the above-named defendant at _____		
Date Received	Name and Title of Arresting Officer	Signature of Arresting Officer
Date of Arrest		